

# **EXHIBIT**

## **A**

**TRAC**

Transactional Records Access Clearinghouse

Syracuse University

June 7, 2004

James M. Kovakas  
Freedom of Information/Privacy Act Office  
Civil Division  
Room 7304  
20 Massachusetts Avenue, NW  
Department of Justice  
Washington, D.C. 20035

Dear Mr. Kovakas:

RE: FOIA request for CASES database and related records

Your web site describes the Department of Justice Civil Division Case Management System known as CASES, and states that data contained in CASES is subject to FOIA. Accordingly, under the provisions of the Freedom of Information Act, we request:

- (A) an electronic copy of those records pertaining to court cases filed or pending in court since October 1, 1999 (FY2000 to date) contained in the CASES database, and
- (B) the following descriptive information about the CASES database:
  - (i) table schema and definitions of all codes used,
  - (ii) records describing the scope of coverage of cases included (and excluded) from CASES,
  - (iii) changes in CASES that have occurred during this period, including changes in case coverage, or in tables, fields, and codes that have occurred and when these changes took place,
  - (iv) current data input and users' manuals, including any directives supplementing (or used in place of) these
  - (v) descriptions of all regularly prepared reports currently using CASES
  - (vi) records describing any validation, error checking or other procedures currently used to ensure data quality

Whenever these records exist in electronic form, we request that they be provided on computer media and that you discuss with us the choice of suitable media and recording formats to be used.

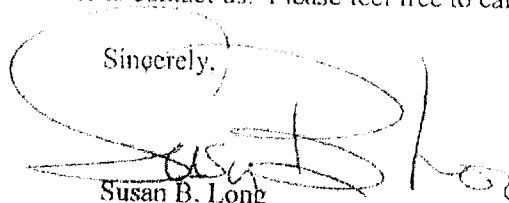
-2-

We request that we be classified as "a representative of the news media" under the provisions of the Freedom of Information Act, and as representatives of "an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." TRAC is a research data center at Syracuse University, and under the direction of its co-directors, Long and Burnham, carries out an active program of scholarly research. TRAC actively seeks to promote public understanding of the operation of the federal government through the gathering and dissemination of information. At TRAC, we actively gather information of interest to the public, transform this information utilizing our editorial and research expertise into various works -- including computerized knowledge bases, electronic and print reports -- and make these works available to the public.

We also request a full waiver of fees. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the federal government. Specifically, these records are being sought to assist us in preparing our regularly published reports, made available through our web site (<http://trac.syr.edu>), which focuses on federal staffing, spending, and enforcement activities. The records sought here, covering litigative activities of the Civil Division of the Department of Justice, are unique in many ways and will allow us to undertake a more detailed examination of the operation of the federal civil justice system.

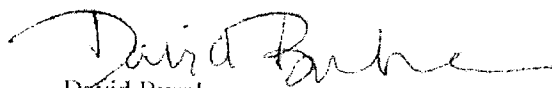
We further call your attention to the strict time limits set for furnished requested records set under 5 U.S.C. 552 and ask for your prompt action and response on this request. Should you have any questions about our request, or if we can be of any assistance to facilitate the processing of this request, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long

Co-Director, TRAC and Associate Professor  
Management Information and Decision Sciences  
Martin J. Whitman School of Management



David Burnham

Co-Director, TRAC and Associate Research Professor  
S.J. Newhouse School of Public Communications

# **EXHIBIT B**



U.S. Department of Justice

Civil Division

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Washington, D.C. 20530

JMK:jk:145-FOI-7814

Susan B. Long/David Burnham  
Co-Directors, TRAC  
488 Newhouse II  
Syracuse, NY 13244-2100

JUL 14 2004

Dear Ms. Long and Mr. Burnham:

This letter responds to Part A of your June 7, 2004 Freedom of Information Act (FOIA) Act request for "an electronic copy of those records pertaining to court cases filed or pending in court since October 1, 1999 (FY2000) to date contained in the CASES database." We received your request in this office on June 8, 2004.

The data contained in CASES is subject to both the Freedom of Information Act (FOIA), 5 U.S.C. §552, as well as the Privacy Act (PA), 5 U.S.C. §552a.

The records contained in this system are indexed and may be retrieved by reference to the names of individuals who are parties to any court case or matter. As such, the CASES system is a PA system of records. The PA requires that you obtain the permission of the individuals to whom the records pertain authorizing us to release the record to you. Since you have not provided the appropriate releases, your request is denied pursuant to the PA, 5 U.S.C. §552a(b).

I have further considered the appropriateness of possible disclosure of this information pursuant to the FOIA. In making my determination I weighed the personal privacy interests of the individuals who are plaintiffs in a wide-range of sensitive personal litigations (i.e. discrimination cases, medical malpractice, radiation exposure, vaccine injury, environmental torts litigation, AID/HIV litigation, financial (bankruptcy) and immigration litigation) as well as individuals named as defendants in their individual capacities. I determined that personal privacy interests exist and can find no public interest which would outweigh these personal privacy interests. Accordingly, data contained in this

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system is exempt pursuant to the FOIA, 5 U.S.C. §552(b)(6).

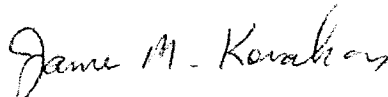
Further, the data identifies pending cases which have been filed under seal of the courts pursuant to 31 U.S.C. 3729-33. This information is therefore exempt from disclosure pursuant to 5 U.S.C. §552(b)(3). The system also identifies attorney comments and notes concerning litigation risk assessment as well as the significance of the litigation prepared to assist branch managers in effectively litigating these cases. Accordingly, this data is exempt from disclosure based upon the attorney work product privilege incorporated within 5 U.S.C. §552(b)(5). Data pertaining to ongoing affirmative cases is exempt pursuant to 5 U.S.C. §552(b)(7)(A). This data was compiled during the course of civil and criminal law enforcement investigations and release would interfere with ongoing proceedings by alerting targets of investigation of the nature and direction of the Division's law enforcement activities.

I will respond to Part B of your request separately. I anticipate that you will receive this response shortly.

If you disagree with my decision to withhold the documents responsive to your request as outlined above, you may appeal by writing within 60 working days of the receipt of this letter to the Office of Information and Privacy, Suite 570, Flag. Building, United States Department of Justice, Washington, D.C. 20530. Both the letter appealing the decision and the envelope should be clearly marked "FOIA APPEAL."

Thereafter, judicial review would be available in the U.S. District Court in the district in which you reside or have your principal place of business or in the U.S. District Court for the District of Columbia.

Sincerely,



James M. Kovakas  
Attorney In Charge  
FOI/PA Office, Civil Division

# **EXHIBIT C**



U.S. Department of Justice

Civil Division

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Washington, D.C. 20530

JMK:jkl:145-FOI-7814

August 23, 2004

Susan B. Long/David Burnham  
Co-Directors, TRAC  
488 Newhouse II  
Syracuse, NY 13244-2100

Dear Ms. Long and Mr. Burnham:

This letter responds to Part B of your June 7, 2004 Freedom of Information Act (FOIA) Act request for records concerning the Cases database. Our responses are to each numbered item as follows:

1. We have no single document which contains a listing of all codes used in Cases. Enclosed are documents which describe the codes for Cases.
2. Enclosed is a listing of all case types for Cases.
3. We are unaware of any changes to the data base during the time period specified. Accordingly, we have no records responsive to this request.
4. I am denying your request for a copy the user's manual and operating instructions for this data base system. These are internal Civil Division documents for use by authorized personnel only to access this secure system containing highly sensitive information. It is important to protect this system from hackers and those who would crash the system or hope to obtain sensitive law enforcement information to aid in the circumvention of federal statutes and regulations. As such, these internal agency documents are exempt from disclosure pursuant to 5 U.S.C. §552(b)(2).
5. We have no single document which describes all regularly prepared reports for Cases. The reports themselves are exempt from disclosure pursuant to 5 U.S.C. §552(b)(3), (b)(5), (b)(6), (b)(7)(C), and/or (b)(7)(D) as well as 5 U.S.C. §552a(b).



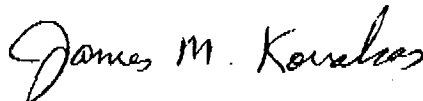
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6. Quality assurance is performed for the Civil Division by its contractor. All documents describing these activities are exempt pursuant to 5 U.S.C. §5552(b)(2).

If you disagree with my decision to deny you access to the documents responsive to your request as outlined above, you may appeal by writing within 60 working days of the receipt of this letter to the Office of Information and Privacy, Suite 570, Flag. Building, United States Department of Justice, Washington, D.C. 20530. Both the letter appealing the decision and the envelope should be clearly marked "FOIA APPEAL."

Thereafter, judicial review would be available in the U.S. District Court in the district in which you reside or have your principal place of business or in the U.S. District Court for the District of Columbia.

Sincerely,

A handwritten signature in cursive script that reads "James M. Kovakas".

James M. Kovakas  
Attorney In Charge  
FOI/PA Office, Civil Division

# **EXHIBIT D**

# TRAC

Transactional Records Access Clearinghouse  
Syracuse University

September 2, 2004

Office of Information and Privacy  
Suite 570, Flag Building  
U.S. Department of Justice  
Washington, D.C. 20530

RE: FOIA APPEAL of July 14, 2004 denial of our June 7, 2004 FOIA request (FOI-7814) for CASES records

Dear Sir or Madam:

In a letter dated June 7, 2004, we submitted a FOIA request to the Civil Division of the United States Department of Justice, which asked for "an electronic copy of those records pertaining to court cases filed or pending in court since October 1, 1999 (FY2000 to date) contained in the CASES database." (A copy of this letter is enclosed.).

In a letter dated July 14, 2004, James M. Kovaka, Attorney In Charge, FOI/PA Office, Civil Division, denied this request (see enclosed copy of his letter).

We appeal this denial to you and request your prompt review and release of the requested information because there is no legal basis for withholding it.

Mr. Kovaka stated several grounds for denying our request. None justifies withholding the information we have requested.

First, Mr. Kovaka asserts that these records are subject to the Privacy Act's requirement that we obtain permission from the individuals who are named in this database before he is authorized to release the information we sought. However, the Privacy Act does not provide a basis for withholding information required to be released by the Freedom of Information Act. See 5 U.S.C. 552a(b)(2); *Crompton v. Stone*, 59 F.3d 1400, 1405 (D.C. Cir. 1995). Thus, the Privacy Act does not provide any independent basis justifying withholding. And since, as shown below, the FOIA requires release of this information, the Privacy Act is not a legal basis for withholding these records from us.

Second, Mr. Kovaka asserts that privacy concerns protected under FOIA exemption (b)(6) prohibit release of these records. However, the request concerns cases that have been filed in court and are already a matter of public record. There is in general no privacy protection for the names of either plaintiffs or defendants, or the fact that such litigation is before the federal and state courts. Current public records systems such as PACER provide, via the web, access to

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court records. In addition, these databases are readily searchable by any member of the public by typing in either the plaintiff's or defendant's name.

Third, Mr. Kovaka asserts the database may be withheld because it:

- \* contains cases filed under seal and is therefore exempt under 552(b)(3),
- \* contains attorney work product exempt under 552(b)(5), and
- \* concerns open enforcement investigations, release of which information is exempt under 552(b)(7).

To the extent that these claims are based upon factual assertions regarding the content of the CASES database records we have requested, Mr. Kovaka has failed to present any concrete evidence to support his factual assertions. Information detailing the content of the database was requested in the same letter and, as yet, has not been provided.

But on its face it should be obvious that even if Mr. Kovaka's factual assertions are true, they are inadequate to support withholding of the *entire* database:

*Sealed records:* It is an exceptional situation where a case is filed under seal, and even in those few cases, the fact of its filing is typically a public record.

*Open law enforcement investigation:* As to the (b)(7) claim of exemption, few if any cases filed in court conceivably would reveal an open enforcement investigation. Indeed, in many cases the government is being sued by outside parties for the government's alleged transgressions. And as to those in which the government is seeking affirmative relief, the very fact that these all concern matters already filed in court make it doubtful that any would qualify under this exemption. The very description of the work of the Civil Division (at <http://www.usdoj.gov/civil/home.html>) indicates that its role is litigation, not investigation, and singles out for mention litigative activities such as: " the defense of challenges to Presidential actions; national security issues; benefit programs; energy policies; commercial issues such as contract disputes, banking insurance, patents, fraud, and debt collection; all manner of accident and liability claims; and criminal violations of the immigration and consumer protection laws."

*Attorney work product:* Publicly available information about the database shows that it contains factual information used for generating management reports, not attorney work product.<sup>1</sup>

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<sup>1</sup>Indeed the brief description of the CASES database available on the web (at: <http://www.usdoj.gov/civil/foia/Systems.htm>) lists only items of fact such as who the parties are, what relief was sought and awarded, the disposition of the case, who are the client agencies, assigned attorneys and time expended, and what physical files are available on the case.

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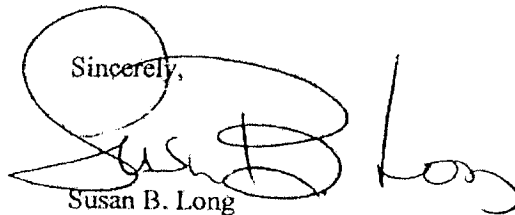
"The [CASES] system is used as a management tool, and is not intended to support the day-to-day activities of the attorneys litigating the cases. It is used for routing of case-related mail, for identifying the attorneys handling a particular case, and for generating statistical, management and budget information."

<http://www.usdoj.gov/civil/foia/Systems.htm>. Because CASES is not intended to support the day-to-day activities of attorneys litigating cases, it would be the exception and not the rule for it to contain any information constituting attorney work product.

In short, each of the three types of information on which Mr. Kovaka relied would be present, if at all, only in a small number of records in the database. But Mr. Kovaka has provided no reason to believe that any records that may contain information about sealed cases, open law enforcement investigations, or attorney work product could not be redacted from the database. It is well established that in order to withhold the entire database, each and every "reasonably segregable portion" must be shown to be exempt. In addition, the burden of proof is on the agency to justify its withholding.

It is therefore clear that in denying our request and withholding the records we requested from the CASES database, the government has acted unlawfully. We ask that this information be promptly released to us. Should you have any questions, or if we can be of any assistance to facilitate the processing of this appeal, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long  
Co-Director, TRAC and Associate Professor  
Management Information and Decision Sciences  
Martin J. Whitman School of Management



David Burnham  
Co-Director, TRAC and Associate Research Professor  
S.I. Newhouse School of Public Communications

Enclosures:

- (1) June 7, 2004 FOIA request letter
  - (2) July 14, 2004 agency denial letter
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# **EXHIBIT E**



ROPE & GRAY LLP

ONE METRO CENTER 700 12TH STREET, NW SUITE 900 WASHINGTON, DC 20005-3948 202-508-4600 F 202-508-4650  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC [www.ropesgray.com](http://www.ropesgray.com)

August 23, 2005

Mara L. Shreck  
(202) 508-4649  
[mara.shreck@ropesgray.com](mailto:mara.shreck@ropesgray.com)

**By Facsimile**

Alan Blutstein, Esq.  
Office of Information and Privacy  
(202) 514-1009

Re: FOIA Appeal # 04-2973

Dear Mr. Blutstein:

Thank you for your telephone message today regarding the status of the above-referenced appeal of a FOIA request by my clients, Susan B. Long and David Burnham of the Transactional Records Access Clearinghouse (TRAC), to the Civil Division of the Department of Justice. Your message confirmed our expectation that the appeal would be remanded to the Civil Division for further processing.

You may not be aware that on August 15, James Kovakas from the Civil Division called Ms. Long to discuss the FOIA request. According to Ms. Long, Mr. Kovakas made several sweeping statements about the technical and practical difficulties of producing parts of the CASES database, which he said was very large and had many records that were responsive to the request. However, when pressed, Mr. Kovakas provided no details to support these assertions. Mr. Kovakas also described the difficulty of screening sealed (i.e., non-public) records, an assertion that appears inconsistent with the publicly available description of the CASES system. This description, found at <http://www.usdoj.gov/civil/foia/Systems.htm>, states that "[a]ll Civil Division employees have view rights to that portion of the database which is a matter of public record," suggesting that there already exists a mechanism for screening out non-public records. Mr. Kovakas offered to provide a statistical analysis of the database rather than the actual data, but was reportedly unable to be specific about his offer. He rejected Ms. Long's request for a meeting with him and his technical staff to discuss the constraints on producing the database and possible acceptable alternatives. Finally, Mr. Kovakas reminded Ms. Long that she and Mr. Burnham were free to file a complaint at any time. Ms. Long was left with the distinct impression that Mr. Kovakas was seeking her consent to accept substantially less information than she and Mr. Burnham had requested and on a much slower timeline than they are entitled to.

I now write to request the intervention of your office in facilitating a prompt resolution between my clients and the Civil Division. We think that this dispute could best be resolved through negotiation, with the aid of a mediator knowledgeable about FOIA; such an approach would

ROPES & GRAY LLP

Alan Blutstein

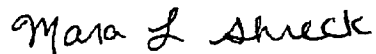
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August 23, 2005

likely produce a better outcome than litigation, in less time and with less expense by all parties. I propose that you arrange a meeting at which we, Ms. Long and Ms. Burnham can meet with Mr. Kovakas and you or someone from your office who is familiar with this FOIA request, along with technical experts from TRAC and the Civil Division.

Please let me know if you would be amenable to such a meeting. You may reach me at the address, telephone number, or email address listed above.

Very truly yours,

A handwritten signature in black ink that reads "Mara L Shreck". The signature is written in a cursive, slightly slanted style.

Mara L. Shreck

cc: Susan B. Long  
David Burnham



# **EXHIBIT F**



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

SEP 02 2005

Mara L. Shreck, Esq.  
Ropes & Gray LLP  
One Metro Center  
700 12th Street NW., Suite 900  
Washington, DC 20005-3948

Re: Appeal No. 04-2793  
Request No. 145-FOI-7814  
RLH:JGM:ALB

Dear Ms. Shreck:

Your clients, Susan B. Long and David Burham, appealed from the action of the Civil Division on their request for "an electronic copy of those records pertaining to court cases filed or pending in court since October 1, 1999 . . . contained in the CASES database." I regret the delay in responding to your clients' appeal.

After carefully considering your clients' appeal, and as a result of discussions between Civil Division personnel and a member of my staff, I have decided to remand your clients' request to the Civil Division for further processing of the responsive records. The Civil Division will disclose any non-exempt portions of these records to you directly, subject to applicable fees. If your clients are dissatisfied with the Civil Division's ultimate action on these records, you may appeal again to this Office.

If your clients are dissatisfied with my action on their appeal, they may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Huff", written over a rectangular box.

Richard L. Huff  
Co-Director

# **EXHIBIT G**

## TRAC

Transactional Records Access Foundation  
Syracuse University

November 9, 2004

Office of Information and Privacy  
Suite 570, Flag Building  
U.S. Department of Justice  
Washington, D.C. 20530

RE: FOIA APPEAL of August 23, 2004 denial of our June 7, 2004 FOIA request  
(FOI-7814) for CASES records

Dear Sir or Madam:

In a letter dated June 7, 2004, we submitted a FOIA request to the Civil Division of the United States Department of Justice, which asked for descriptive information about the CASES database. Six categories of descriptive information were requested. (See item (B) in the attached FOIA request.) Note that the government's earlier denial of Item (A) of this request is now pending on appeal before your office (Appeal #04-2793).

In a letter dated August 23, 2004 and received August 27, James M. Kovaka, Attorney In Charge, FOI/PA Office, Civil Division, provided a final determination with respect to Item (B) of this request. While a few records were furnished, most requested records were either withheld or claimed not to exist. (See enclosed copy of his letter.)

We appeal this final determination on the following four general grounds:

- First, there is no valid legal basis for withholding the requested information.
- Second, where documents were withheld, the government's response did not describe with particularity what these documents consisted of either by describing each one, or by giving, their titles, author, dates, and pages. Thus, the government's withholding did not meet its legal burden under FOIA to justify its withholding.
- Third, the government provided no evidence that it conducted an adequate search for these records. We ask that the government meet its legal obligation to carry out an adequate search for these requested records, and provide specific details on the nature of this search, when it was conducted, who carried out the search, what places were searched, and what specific categories of information were looked for. Where additional documents are found, we ask that they be provided to us.

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- Fourth, where records were provided they were provided in paper form despite our stated request for receiving electronic copies, and the government did not explain its failure to furnish copies electronically.

CASES is an acronym that stands for the Civil Division's Case Management System, a computerized database. The Department of Justice describes CASES as a "management tool" that allows the agency to "identifying the attorneys handling a particular case, and for generating statistical, management and budget information." See: <http://www.usdoj.gov/civil/foia/Systems.htm>.

Six categories of records were requested in Item (B). We discuss the specifics of each in turn.

**(i) table schema and definitions of all codes used. [government refers to as "1"]**

The government's response is only partially responsive. Mr. Kovakas states that no single document exists containing the requested information. However, it is irrelevant whether the requested information exists in a single document, or in several documents. A search should not be restricted to looking for a single document containing all of the requested information. Separate records may contain definitions of different codes used, and a number of separate documents can encompass the information in a table schema. All responsive records need to be provided.

Further, Mr. Kovakas does not explain whether they searched for electronic records or restricted their search to paper records, although it is usual for table scheme and code definitions for computer databases to be stored electronically as part of, or in conjunction with, the database. And no electronic records were provided. Nor was any explanation provided of why it wasn't possible to furnish them electronically.

In addition, the records appear incomplete. The response does not indicate whether or not the information provided purports to be a complete list of fields and codes in the database, or only a partial listing. It does not include the full range of information encompassed in "table schema" which is a technical term used with databases. While there is a descriptive list of some fields, it contains no information about what table or tables there are in CASES, what fields are contained in which tables, the field lengths and how information in the field is encoded (e.g., numeric, character, date, decimal, etc.), and if there are multiple tables how they are linked. All of these types of information are encompassed within the class of records referred to as table schemas, and we ask that records containing this information be promptly provided to us.

**(ii) records describing the scope of coverage of cases included (and excluded) from CASES [government refers to as "2"]**

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The government's response is again only partially responsive. A list of the types of cases covered was provided. However, no information was provided about at what point something under these categories becomes a "case" that should be entered. Or, what under any of these headings constitutes a "case." Information on databases typically contain some definition of what should (and shouldn't) be entered into the database, and when it should be entered and when it should be closed. But this information was not provided. We believe an adequate search would have located such documentation.

**(iii) changes in CASES that have occurred during this period, including changes in case coverage, or in tables, fields and codes that have occurred and when these changes took place [government refers to as "3"]**

The government asserts that since they are unaware of any changes to the data base during the time period specified, they therefore have no responsive records. We ask that a search be conducted nonetheless. Changes in databases are quite common. We note that there is a hand written addition to the list of codes we were provided. A code "600" for "Supreme Court Stage" was added by hand in the records we received. No reference was made to this change as to what this represented, or when it occurred. And none of the pages have any dates on them, nor is the hand entry dated, so we cannot tell from the records themselves "when these changes took place." It is common for prior editions of directives, users' manuals, and data input materials may contain differences from current versions. These should have been included in any search that was conducted.

**(iv) current data input and users' manuals, including any directives supplementing (or used in place of) these [government refers to as "4"]**

Mr. Kovaka asserts that current users manuals, directives and instructions on data input for the CASES database cannot be released because the records contain "high sensitive information" they are exempt in their entirety under 5 U.S.C. 552(b)(2). This claim on its face is deficient on numerous grounds.

First, mere unsupported generalized claims are an insufficient basis to deny access to documents. The agency must provide a concrete connection between its exemption claim and the actual content of these records.

In contrast to the claims made, an actual examination of the records will show that they do not fall within the class of information covered by this exemption claim. These manuals and directives spell out what data fields exist in the database, on which of these the information is required to be entered and which are optional entries, the maximum number of characters that can be entered in a field. A users manual will provide instructions on how to record the branch handling the case and to find the specific codes used to distinguish which court the case was filed in, and so forth. It is difficult to understand how such information would be of any assistance to "hackers and those who would crash the system or hope to obtain sensitive law enforcement

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information to aid in the circumvention of federal statutes and regulations."

The simple fact is that in agency after agency, such users manuals are routinely released. Anyone seeking to use the information in the database to analyze the accomplishments of an agency needs to have a clear understanding of what information is contained in the database and how it is entered. Further, a researcher relying upon published agency statistics based upon information derived from the CASES database will find data input and users manuals an important resource in assessing strengths and weaknesses in the underlying information on which the agency statistics were based.

Second, while it is highly unlikely that sensitive information such as computer userid and passwords used to sign onto the computer system would be printed in a user's manual, this is not a proper justification to withhold the documents in their entirety. Should such sensitive information in fact exist in these manuals, the solution is to redact this sensitive information and release the remaining material. It is unlawful to withhold the entire document on the basis that it may contain at some place some sensitive material.

Third, the response is further deficient in that while it speaks of "documents" in the plural that are being denied, no specification of exactly what these documents consist of – for example, their titles, number of pages, etc. was provided. The burden of proof is on the agency to justify its withholding. It is long established that mere blanket assertions do not suffice. The information being withheld must be identified with specificity.

**(v) descriptions of all regularly prepared reports current using CASES [government refers to as "5"]**

The government denies this information because: "We have no single [sic] document which describes all regularly prepared reports for CASES." This is not a valid basis for denial since nowhere did we limit our request to a single document. The government must conduct a proper search and release any records containing a description of one or more regularly prepared reports.

**(vi) records describing any validation, error checking or other procedures currently used to ensure data quality [government refers to as "6"]**

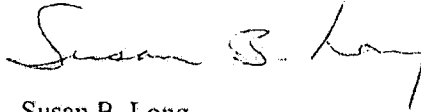
The government asserts that all of these records are exempt under 5 USC 552(b)(2). This exemption is limited to records "related solely to the internal personnel rules and practices of an agency." In contrast, the records requested here relate to how the agency ensures that the information derived from CASES is accurate. Proper management of any database system requires that adequate controls be in place to ensure data quality. CASES is used as a management tool to see that the Civil Division effectively and efficiently carries out its mission. The data are further used to support agency budget requests. See: <http://www.usdoj.gov/civil/foia/Systems.htm>.

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Clearly it is of some significant public interest whether the agency has procedures to ensure the accuracy of information being used for these purposes. Thus, exemption (b)(2) does not apply. The information requested are not procedures so routine or trivial that they could not be "subject to . . . a genuine and significant public interest." *Department of the Air Force v. Rose*, 425 U.S. 352 (1976) These are not matters in which the public could not reasonably be expected to have an interest. *DOJ Freedom of Information Act Guide*, May 2004.

For all of the above reasons it is clear that in denying our request and withholding the records we requested about the CASES database, the government has acted unlawfully. We ask that this information be promptly released to us. Should you have any questions, or if we can be of any assistance to facilitate the processing of this appeal, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long  
Co-Director, TRAC and Associate Professor  
Management Information and Decision Sciences  
Martin J. Whitman School of Management



David Burnham  
Co-Director, TRAC and Associate Research Professor  
S.I. Newhouse School of Public Communications

Enclosures:

- (1) June 7, 2004 FOIA request letter
- (2) August 23, 2004 agency denial letter (received August 27, 2004)



# **EXHIBIT H**



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

SEP 19 2005

Mara L. Shreck, Esq.  
Ropes & Gray LLP  
One Metro Center  
700 12th Street NW., Suite 900  
Washington, DC 20005-3948

Re: Appeal No. 05-0355  
Request No. 145-FOI-7814  
RLH:ALB:JHA

Dear Ms. Shreck:

Your clients, Susan B. Long and David Burnham, appealed from the action of the Civil Division on "part B" of their request for access to records concerning the CASES database, specifically: (1) "table schema and definitions of all codes used;" (2) the scope of cases included or excluded from the database; (3) changes in CASES from October 1, 1999 to the present; (4) current CASES data input and users' manuals, including directives supplementing such manuals; (5) regularly prepared reports currently using CASES; and (6) "records describing any validation, error checking or other procedures currently used to ensure data quality."

After carefully considering your clients' appeal, and as a result of discussions between Civil Division personnel and a member of my staff, I have decided to affirm in part and remand in part the Civil Division's action on your clients' request.

By letter dated August 24, 2004, the Civil Division provided you with records responsive to items one and two of your clients' request. In response to your appeal, the Civil Division provided these documents to you in electronic format by letter dated August 9, 2005.

Subsequent to your clients' appeal, the Civil Division conducted a further search for records responsive to items three and five of your clients' initial request, and located records responsive only to item five. It is my understanding that the Civil Division provided your clients with these additional documents by letter dated April 4, 2005. Based on this information, I have determined that the Civil Division conducted an adequate search of its files and there are no further records responsive to items three and five of your clients' request that are maintained by the Civil Division.

-2-

With respect to items four and six of your clients' request, I have decided to remand their request for further processing of responsive documents. The Civil Division will send any releaseable portions of these records to you directly. If your clients are dissatisfied with the ultimate action of the Civil Division on this request, they may appeal again to this Office.

Finally, I am denying your clients' request that we itemize and justify each item of the information withheld. Your clients are not entitled to such a listing at the administrative stage of processing FOIA requests and appeals. See Judicial Watch v. Clinton, 880 F. Supp. 1, 10 (D.D.C. 1995).

If your clients are dissatisfied with my action on their appeal, they may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Huff", written over a horizontal line.

Richard L. Huff  
Co-Director

# **EXHIBIT**

## **I**



ROPES & GRAY LLP

ONE METRO CENTER 700 12TH STREET, NW SUITE 900 WASHINGTON, DC 20005-3948 202-508-4600 F 202-508-4650  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC [www.ropesgray.com](http://www.ropesgray.com)

October 21, 2005

Mara L. Shreck  
(202) 508-4649  
[mara.shreck@ropesgray.com](mailto:mara.shreck@ropesgray.com)

**By Facsimile**

Richard L. Huff  
Office of Information and Privacy  
(202) 514-1009

Re: FOIA Appeal # 05-0355  
Request No. 145-FOI-7814

Dear Mr. Huff:

We have received your letter dated September 19, 2005 regarding the above-referenced appeal. We believe that, with respect to certain of our requests, your information is incomplete. Specifically:

With respect to what is referred to in your letter as item (1), the material provided by the Civil Division on August 24, 2004 and August 9, 2005 was only partially responsive. The request was for "table schema and definitions of all codes used." The material supplied by the Civil Division provided only "case type codes and descriptions." As explained in our letter of appeal dated November 9, 2004, "table schema" is a technical term which can be understood to include, among other things, a list of tables included in the CASES database, the fields included in those tables, the field lengths and how information in the field is encoded, and if there are multiple tables, how they are linked. None of this information was provided. We therefore request that you revisit the adequacy of the Civil Division's production in response to this request.

As to request (2), for "records describing the scope of coverage of cases included (and excluded) from CASES," no information was provided. We therefore request that you revisit the adequacy of the Civil Division's production in response to this request.

We recognize that some of the information contained in both of these requests may be subsumed by request (4) for "current data input and users' manuals, including any directives supplementing (or used in place of) these," which request you have remanded (along with request (6)) to the Civil Division, and we look forward to receiving those documents in a timely manner.

ROPES & GRAY LLP

Richard L. Huff

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October 21, 2005

Additionally, the Civil Division's April 4, 2005 response to request (5), for "descriptions of all regularly prepared reports currently using CASES," was also incomplete. We were provided with what appears to be a list of reports, but received no descriptive information as to what is contained in those reports. We therefore request that you revisit the adequacy of the Civil Division's production in response to this request.

Finally, I would like to reiterate my request, made to Alan Blutstein on August 23, 2005, that your office help to facilitate a prompt resolution between my clients and the Civil Division, rather than simply forwarding the file for further action and awaiting another appeal. We think that this dispute could best be resolved through negotiation, with the aid of a mediator knowledgeable about FOIA; such an approach would likely produce a better outcome than litigation, in less time and with less expense by all parties. Can you arrange a meeting at which we, along with Professors Long and Burnham, can meet with Mr. Kovakas and you or someone from your office who is familiar with this FOIA request, along with technical experts from TRAC and the Civil Division?

Please let me know if you would be amenable to such a meeting. You may reach me at the address, telephone number, or email address listed above.

Very truly yours,



Mara L. Shreck

cc: Susan B. Long  
David Burnham

# **EXHIBIT J**



U.S. Department of Justice

Civil Division

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Washington, D.C. 20530

JMK:jk:145-FOI-7814

March 3, 2006

Susan B. Long/David Burnham  
Co-Directors, TRAC  
488 Newhouse II  
Syracuse, NY 13244-2100

Dear Ms. Long and Mr. Burnham:

After reviewing your administrative appeal of actions taken by the Civil Division in response to your June 7, 2004 Freedom of Information Act (FOIA) Act request for records concerning the Cases database, the Office of Information and Privacy remanded your request to this office for additional processing.

I determined that the Classification Manual pertaining to the CASES database may be released to you. A copy of this document is enclosed.

As the result of discussions with the Civil Division's technical staff, we determined that those fields of the database relating to filed cases containing data which would not reveal the identity of parties or work product, or other information exempt pursuant to the FOIA, could be selected and released to you.

We have identified over 650 data fields relating to filed cases. Enclosed is a listing of these data fields contained in a document entitled "FOIA CASES DATA DICTIONARY." Column A is the name of the table in which the field is located, column B identifies the field, columns C, D, and E provide information concerning the type of data, length and description of the field. Column F provides an exemption if the field is to be withheld and is blank if the data contained in the field will be produced.

The data provided will be from fiscal year 2000 to the present. For each of the over 95,000 cases, the non-exempt fields will contain either data or a code if data is maintained

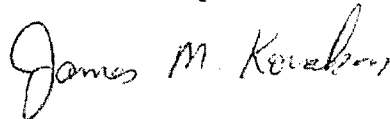


-2-

in the fields. We will also provide you with a listing of all codes and a description of the code for your convenience in interpreting the codes. The data will be provided on a CD-ROM and we are hopeful that our technical staff can complete this production in the next few weeks.

Please do not hesitate to contact me at (202) 514-3319 if you have any questions in this regard.

Sincerely,

A handwritten signature in dark ink, appearing to read "James M. Kovakas". The signature is fluid and cursive, with the first name "James" being more prominent.

James M. Kovakas  
Attorney In Charge  
FOI/PA Office, Civil Division

Enclosures

# **EXHIBIT K**



**U.S. Department of Justice**

**Office of Information and Privacy**

*Telephone: (202) 514-3642*

*Washington, D.C. 20530*

**March 22, 2006**

Mara L. Shreck, Esq.  
Ropes and Gray LLP  
One Metro Center  
700 12<sup>th</sup> Street, NW  
Suite 900  
Washington, DC 20005-3948

Dear Ms. Shreck:

As you know, your telephone call of January 27, 2006, to Office of Information and Privacy Deputy Director Melanie A. Pustay was forwarded to me in my capacity as the FOIA Ombudsman for the Department of Justice. Your call was with regard to your letter of October 21, 2005, to OIP Co-Director Richard L. Huff (now retired) and concerned the September 19, 2005 decision made by this Office on Freedom of Information Act Appeal No. 05-0355, submitted by Co-Directors Susan B. Long and David Burnham, Transactional Records Access Clearinghouse (TRAC).

The underlying FOIA request that was the subject of Appeal No. 05-0355 had been made to the Civil Division of the Department of Justice and concerned TRAC's request for information about CASES, the Civil Division Case Management System. Your letter to Mr. Huff expressed your dissatisfaction with OIP's appeal adjudication regarding that request (a partial remand to the Civil Division) as well as with the processing of the request by the Civil Division.

On my referral you have since had a discussion with James Kovakas, the FOIA Chief for the Civil Division. Further, Ms. Long received an interim response in mid-March from the Civil Division with regard to OIP's remand. And it is now anticipated that a further and final response will be made by the Civil Division to TRAC in late March. In the intervening weeks, I have learned that unknown to Deputy Director Pustay, your letter of October 21, 2005, also had been treated as a request for reconsideration of OIP's appeal determination of September 19, 2005. As such, your letter was assigned to OIP staff attorney Jennifer Ashworth for review and a recommendation as to its disposition.

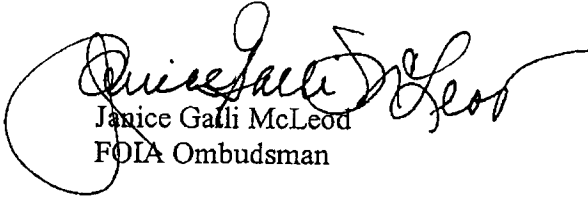
Because the administrative processing of TRAC's request is ongoing, I believe that the most appropriate course to take (as I outlined in my voice message to you on March 15, 2006) is to await the Civil Division's final response to the above-referenced request and then allow TRAC sufficient time to review the released materials. After this review, TRAC may then direct a letter covering any

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remaining questions concerning the administrative processing of either of its requests<sup>1</sup> to Ms. Ashworth, who will then make recommendations based upon her review of the remaining issues, if any. After Ms. Ashworth's recommendations are reviewed, a final letter from this Office will be forthcoming.

I appreciate your spirit of cooperation and remain confident that at least a portion of the questions already raised by TRAC will be resolved in the Civil Division's final response to Co-Directors Long and Burnham, with any remainder still addressable within the realm of administrative appeal adjudication.

Sincerely,



Janice Galli McLeod  
FOIA Ombudsman

cc: James Kovakas, Chief  
FOIA Unit, Civil Division

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<sup>1</sup> While the subject of your October 21, 2005 letter to Mr. Huff concerned only Appeal No. 05-0355, I suggest that you raise any lingering questions with regard to Appeal No. 04-2793 which is likewise concerned with CASES.

# **EXHIBIT L**



U.S. Department of Justice  
Civil Division

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Washington, D.C. 20530

JMK:jk:145-FOI-7814

March 31, 2006

Susan B. Long/David Burnham  
Co-Directors, TRAC  
488 Newhouse II  
Syracuse, NY 13244-2100

Dear Ms. Long and Mr. Burnham:

Enclosed is a disk containing non-exempt data from the Civil Division's CASES data base from FY 2000 to the present responsive to your June 7, 2004 Freedom of Information Act request.

Field Codes (decodes) are a field in the database or are included as a separate Table on the CD. A schema found on the CD as the icon Relationships will permit you to link tables.

Please do not hesitate to contact me at (202) 514-3319 if you have any questions in this regard.

Sincerely,

A handwritten signature in cursive script that reads "James M. Kovakas".

James M. Kovakas  
Attorney In Charge  
FOI/PA Office, Civil Division

Enclosure

# **EXHIBIT**

## **M**



ROPE & GRAY LLP

ONE METRO CENTER 700 12TH STREET, NW SUITE 900 WASHINGTON, DC 20005-3948 202-508-4600 F 202-508-4650  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

May 16, 2006

Patricia E. Campbell  
202-508-4694  
Patricia.Campbell@ropesgray.com

Jennifer Ashworth, Staff Attorney  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Re: Freedom of Information Act Appeal No. 05-0355 and Appeal No. 04-2793 from  
Request No. 145-FOI-7814, filed June 7, 2004

Dear Ms. Ashworth:

I write in response to Janice McLeod's letter of March 22, 2006 to Mara Shreck, relating to the above-referenced FOIA appeals submitted by the Transactional Records Access Clearinghouse (TRAC). Ms. McLeod instructed that after TRAC received the Civil Division's final response to Appeal No. 05-0355, we should then correspond with you about any remaining issues concerning either of these appeals.

In response to the remand from the Office of Information and Privacy, the Civil Division released three records to TRAC. On March 3, 2006, the Civil Division produced a FOIA CASES Data Dictionary ("Data Dictionary") compiled by its technical staff, as well as a Case Classification Manual dated June 2001 pertaining to the CASES database. On March 31, a CD containing a Microsoft Access file of CASES data was also released.<sup>1</sup> According to the cover letter from James M. Kovakas accompanying the CD, it contains "non-exempt data from the Civil Division's CASES data base from FY 2000 to the present" responsive to TRAC's FOIA request.

We have now had an opportunity to review the materials produced by the Civil Division through March 31, 2006, and have determined that the production is deficient in a number of respects. Specifically, we have the following concerns.

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<sup>1</sup> Note that Civil Division produced a CD earlier in March 2006, but it then requested that TRAC immediately return that CD because it allegedly included materials that should have been redacted but that had been inadvertently included in the release. TRAC returned that CD, and it was replaced by the CD released on March 31, 2006.



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May 16, 2006

The Data Dictionary released on March 3 identifies 39 separate tables, containing a total of 652 data fields relating to filed cases. However, the CASES data contained on the CD included only 12 of the 39 tables in the Data Dictionary, while the remaining 27 tables were withheld in their entirety. In addition, numerous fields in the 12 released tables were also withheld. The Civil Division erroneously contends that many of these tables and fields are exempt from disclosure under 5 U.S.C. § 552(b)(5), (b)(6) and/or (b)(2)("low"); other fields were withheld without any exemption being claimed.

We do not agree that all of the withheld tables and fields are exempt from disclosure under FOIA. For example, the Civil Division has withheld data fields containing court docket numbers, case captions and names of parties on the ground that disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. *See* Data Dictionary, entries 22, 57-59, 71, 143, 154-55, 163, 172-73. However, because TRAC only requested information relating to filed cases, the docket numbers, captions and names of the parties involved in those cases are matters of public record. Release of information that is already public cannot constitute an invasion of personal privacy. (There is no issue of privacy for persons implicated in law enforcement investigations, so the *Reporters Committee* case does not apply here.)

Similarly, the Civil Division has withheld numerous data fields identifying the attorneys assigned to matters, the type of assignments received by those attorneys (e.g., petitions, motions, briefs), and the nature of the relief sought by the parties in the subject cases. The Civil Division contends that this information is exempt from disclosure under Section (b)(5), on the ground that this information would not be available by law to a party other than an agency in litigation with the agency (*i.e.*, work product). *See, e.g.*, Data Dictionary entries 9-11, 91-94, 112, 115. Again, much of this information is already public. The identity of the Department attorney assigned to a matter is well known, and the court docket shows the precise types of motions and petitions filed by the government. The nature of the relief sought can be readily determined from the pleadings. None of this qualifies as "attorney work product" under any stretch of the imagination. And under *Tax Analysts*, that the information is publicly available elsewhere from individual court dockets does not justify its being withheld.

However, the bulk of the data fields have been withheld on the basis that they are internal matters of a relatively trivial nature under Section (b)(2) ("low two"). Many of these fields include sequential numbers assigned to records, information about when the records were created and edited, and the dates when various other actions were taken. *See, e.g.*, Data Dictionary entries 2-6, 60-61, 63, 120-21, 130, 152, 177, 181, 211-15, 227, 235, 252-53, 287, 290, 348. The information contained in these fields is not trivial in nature because it is essential to the usability of the data. For example, the Civil Division has withheld computer-assigned sequence numbers that are necessary in order to link information about a case found in one table with information about that same case located in another table. Without these sequence numbers, it is impossible

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May 16, 2006

to make any meaningful use of the CASES data. Withholding this information appears less designed to exclude trivial matter from disclosure than to diminish the utility of other data, thus advancing no interest of the second exemption while undermining the general purpose of the FOIA to allow the public to better understand what government is doing.

Numerous other problems exist with the data fields that have been withheld and the exemptions claimed by the Civil Division, and the examples provided above are in no way intended to be comprehensive. As we have offered in the past, we would be happy to discuss additional concerns about the withheld data fields and the claimed exemptions with the appropriate personnel.

The Civil Division also failed to comply with the requirements of FOIA by indicating when information in the CASES database had been redacted. FOIA requires that the amount of information deleted shall be indicated on the released portion of the record and, where technically feasible, redactions must be indicated at the place in the record where the deletion was made. 5 U.S.C. § 552(b). However, the CASES data released on March 31 does not indicate how much information was deleted from the database prior to production to TRAC, nor does it indicate where in the record those deletions were made. Because the copy that was provided did not include tables, fields and records requested from CASES for which no claim of exemption was made, it is also essential that we be provided with sufficient details about the implementation of the process of making the copy, so that we can confirm that the criteria and methods used resulted in a proper copy of the original data and can ensure that no information was inadvertently omitted from the copy TRAC received. The information provided should include copies of all programs used for selecting the records to be copied, making the copy and completing the redactions, as well as computer logs reflecting those steps. TRAC is entitled to receive such an audit trail.

Moreover, in its original FOIA request dated June 7, 2004, TRAC requested all records pertaining to court cases filed or pending in court since October 1, 1999. Although Mr. Kovakas' March 3, 2006 letter to Susan B. Long and David Burnham indicates that the Civil Division intended to provide CASES data relating to "filed cases," nevertheless it appears that the Civil Division only released data relating to closed cases, not all filed cases. The CASES database contains a field that indicates whether a case is open or closed. By looking at this field, we have been able to determine that all of the information released pertains to cases that have been closed, yet the Civil Division has provided no justification for withholding data relating to filed cases that remain open. Perhaps failure to disclose these data was an oversight, since it was not identified or explained.

The Civil Division's response to TRAC's Part B requests for documentation relating to the CASES database (Appeal No. 04-2793) also remains deficient in every category. Mr. Kovakas' March 31 cover letter indicated that a database schema found on the CD as the icon

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May 16, 2006

"Relationships" would permit the tables to be linked together. Likewise, in conversations with Mr. Kovakas prior to March 31, Professor Long, one of the co-directors of TRAC, was assured that this schema would be included with the CASES data that were released. However, no such database schema was included on the CD produced to TRAC on March 31, nor did the CD contain any icon named "Relationships." Will this schema be produced to TRAC?

The Data Dictionary released on March 3 also refers to sets of codes that should be found in other code tables, but those code tables were not provided. Further, numerous fields included in the CASES data that were produced are not identified in the Data Dictionary. CASES is an Oracle database. Every Oracle database contains a complete list of tables, a list of fields contained within those tables, and descriptive information that is critical to understanding the entries contained in those fields. Without this information, the data released to TRAC has little meaning. We would appreciate receiving those code tables.

The Civil Division's response to TRAC's request for documents relating to regularly prepared reports that currently use the CASES database (Request No. 5) was also incomplete. The Civil Division responded to this request by providing a list of regularly prepared reports from its internal website. Only the titles of the reports were included, and no descriptive information about these reports was provided. Moreover, it is likely that many additional reports are prepared on a regular basis, such as technical reports relating to the CASES data. In addition, there are many classes of records that may describe these reports that would be covered by TRAC's requests, including instructions provided to the programmers describing the reports and directing that they be produced and distributed. Many agencies have specific numbering systems for such reports, and the numbering system may contain descriptions as well as listings of report titles. All such information should have been released to TRAC.

We are also concerned about the adequacy of the Civil Division's response to TRAC's request for information about changes in case coverage or in CASES tables, fields and codes that may have occurred since October 1, 1999 (Request No. 3). In its initial response, the Civil Division said it was unaware of any such changes. However, the Case Classification Manual released on March 3, 2006 is dated June 2001. It is difficult to believe that no new directives or other changes have occurred in the four years since the Manual was published. Likewise, given the major reorganization of the federal government that took place with the establishment of the Department of Homeland Security after September 11, 2001, the manner in which agencies are recorded in the CASES database may well have been changed. However, no directives authorizing such changes to the database have been released, nor have we been provided with any information relating to such alterations. Also, Oracle databases commonly include in their code tables the date and time when each code was added to the database, but no records of this sort have been released to us.

ROPES & GRAY LLP

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May 16, 2006

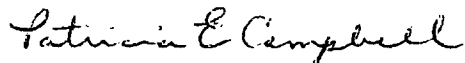
In addition, only one document was produced in response to TRAC's requests for information about the scope of cases included or excluded from the database (Request No. 2) and current CASES data input and users' manuals (Request No. 4), and that document was incomplete. The Case Classification Manual released on March 3 is missing numerous pages, including designated figures or "sample" cards, appendices, and letters of instruction. No records describing any validation, error checking or other procedures used to ensure data quality (Request No. 6) have been released. No explanation of reasons for withholding have been offered.

As a result, we request that the Civil Division be instructed to review the adequacy of the searches it conducted in response to TRAC's requests and revisit the records it released. Those searches should include electronic records and logs, computer programs and specifications, contracts, and communications between the agency and outside contractors engaged in the design, testing and maintenance of the CASES database.

We have been extremely patient and have attempted to work with the Department for many months to avoid litigation on these matters. We are therefore providing the Department with an additional 30 days to clarify its position and fully respond to TRAC's requests before taking any further action.

Please do not hesitate to contact me if you wish to discuss this matter further.

Very truly yours,

  
Patricia E. Campbell

cc: Janice Gali McLeod  
James M. Kovakas